



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 19 December 2002**

**15627/02**

---

**Interinstitutional File:  
2001/0207 (CNS)**

---

**LIMITE**

**ASILE 82**

**PUBLIC**

**OUTCOME OF PROCEEDINGS**

---

from : Asylum Working Party

---

on : 12 December 2002

---

No. prev. doc. : 14643/1/02 ASILE 68 REV 1 + ADD 1

---

No. Cion prop. : 13620/01 ASILE 52 - COM(2001) 510 final

---

Subject : Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

---

**I**

At its meeting on 12 December 2002, the Asylum Working Party continued its examination of the above proposal (Articles 20 to 25).

Delegations will find in section II below the text of Articles 18 and 20 to 39 with delegations commnets in the footnotes.

Changes to 14643/1/02 ASILE 68 REV 1 + ADD 1 are in bold.

## II

Draft

### **COUNCIL DIRECTIVE**

**on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted**

#### **Article 18**

##### **Content of international protection**

1. The rules laid down in this Chapter shall be without prejudice to the rights laid down in the Geneva Convention.
2. The rules laid down in this Chapter shall apply both to refugees and persons eligible for subsidiary protection unless otherwise indicated.
3. When implementing the provisions of this Chapter, Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
4. Paragraph 3 shall apply only to persons found to have special needs after an individual evaluation of their situation.
5. Within the limits set out by the Geneva Convention, Member States may reduce the benefits of Chapter VII, granted to a refugee, whose refugee status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a refugee.

6. Within the limits set out by international obligations of Member States, Member States may reduce the benefits of Chapter VII, granted to a person eligible for subsidiary protection, whose subsidiary protection status has been obtained on the basis of activities engaged in for the sole or main purpose of creating the necessary conditions for being recognised as a person eligible for subsidiary protection.

## **Article 20**

### **Information**

Member States shall provide persons recognised as being in need of international protection, as soon as possible after status has been granted, with **access to** information, in a language likely to be understood by them, on the rights and obligations relating to the respective protection status.

## **Article 21**

### **Residence permits**

1. As soon as **possible after** their status has been granted **and without prejudice to Article 19(3)**, Member States shall issue to **beneficiaries of refugee status** and their [...] family members a residence permit which must be valid for at least **three years**<sup>1</sup> and renewable. [...] <sup>2</sup>
2. As soon as **possible after** the status has been granted Member States shall issue to **beneficiaries of** subsidiary protection status and their [...] family members a residence permit which must be valid for at least one year<sup>3</sup> **and renewable unless compelling reasons of national security or public order otherwise require.**

---

<sup>1</sup> **B and S** : could accept a three year period only if the same period is established in paragraph 2.

<sup>2</sup> **F** : scrutiny reservation.

<sup>3</sup> **B/S** : want a period of the same duration as the one established in paragraph 1.

**Article 21A**  
**Maintaining family unity<sup>1</sup>**

1. Member States shall ensure that family members of the same nationality<sup>2</sup> as the beneficiary of refugee or subsidiary protection status **and who do not individually qualify for such statuses**, are entitled to a status which will enable them to stay with the beneficiary. This status cannot be less favourable than the one granted to family members who have been reunified with a beneficiary of refugee or subsidiary protection status in accordance with family reunification regulations.<sup>3</sup>

---

<sup>1</sup> **D** : proposed the following text :

**Extension of refugee protection to family members**

1. Member States shall ensure that family members are entitled to refugee status already
  - (a) if they lodged their application for international protection before or at the same time as the refugee or without any delay after entering the territory of the Member State and
  - (b) if pursuant to Article 2 (j) (i) the marriage or the stable relationship with his/her unmarried partner already existed in the country of origin of the refugee or of his/her spouse or unmarried partner.
2. In cases pursuant to Article 2 (j) (ii) where the child is born on the territory of the Member State after the recognition of the refugee the application for international protection has to be filed within a period of one year after birth.
3. The rule laid down in paragraph 1 is not applicable if the family member is excluded from refugee status pursuant to Article 14.
4. Member States may introduce regulations which establish that paragraphs 1 to 3 apply mutatis mutandis to family members of persons who are eligible for subsidiary protection status.

<sup>2</sup> **B/S** : delete "of the same nationality".

<sup>3</sup> **FIN** : wanted the following text :

**"Need for protection as a result of a family tie**

Where a foreigner with a family obtains refugee status or subsidiary protection status, a member of his family as referred to in Article 2 who has entered the country and has no grounds of his own for obtaining protection shall be granted the same status, unless his need for protection is to be examined separately as a result of a different background or nationality."

**S** : wanted the following text :

"Where a third country national or stateless person obtains Refugee Status or Subsidiary Protection Status, a member of his or her family who has entered the country and who has no grounds of her or her own for obtaining protection shall be granted the same status, unless his or her need for protection is to be examined separately."

2. Member States may decide that paragraph 1 also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of **refugee or subsidiary protection status** at that time.

**3A Family members who fall under the scope of paragraph 1 are entitled to the benefits referred to in Articles...**

3. The rule laid down in paragraph 1 is not applicable where the family member is excluded from refugee or subsidiary protection status pursuant to Chapters III and IV.

## **Article 22**

### **Long-term residence status**

[...] Member States shall grant **beneficiaries of** subsidiary protection status long term-residence status on the same terms as those applicable to **beneficiaries of refugee status according to national law.**<sup>1</sup>

## **Article 23**

### **Travel document**

1. Member States shall issue to persons to whom they have granted refugee status travel documents in the form set out in the Schedule to the Geneva Convention, for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require.
2. Member States shall issue [...] to **beneficiaries of subsidiary protection status** who are unable to obtain a national passport, **documents which enable them to travel unless compelling reasons of national security or public order otherwise require.**<sup>2</sup>

---

<sup>1</sup> **IRL/S/UK** : scrutiny reservations.

<sup>2</sup> **A/D/EL/E/I/NL** : scrutiny reservations.

**D/EL** : Member States should have the possibility of delivering travel documents to beneficiaries of subsidiary protection status only in certain cases.

**B** : travel documents delivered to beneficiaries of refugee or subsidiary protection status should be recognized by the other Member States.

## Article 24

### Access to employment

1. Member States shall authorise **beneficiaries of refugee status** to engage in employed or self-employed activities under **equivalent** conditions as nationals, immediately after the refugee status has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training<sup>1</sup> and practical workplace experience are offered to **beneficiaries of refugee status**, under **equivalent** conditions as nationals.
3. Member States shall **normally** authorise **beneficiaries of** subsidiary protection status to engage in employed or self-employed activities under **equivalent** conditions as nationals **immediately after the subsidiary protection status has been granted.**<sup>2</sup>
4. Member States shall ensure that **beneficiaries of** subsidiary protection status **normally** have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under **equivalent** conditions as nationals [...].<sup>3</sup>
5. (deleted)<sup>4</sup>

---

<sup>1</sup> S : scrutiny reservation concerning vocational training.

<sup>2</sup> A/B/D : scrutiny reservations.

FIN/NL/S : wanted direct access to work for both status.

<sup>3</sup> A/B/D : scrutiny reservations.

<sup>4</sup> B/NL/S : scrutiny reservations on the deletion.

**Article 25**  
**Access to education<sup>1</sup>**

1. Member States shall grant full access to the education system to all [...] minors **granted refugee or subsidiary protection status** under the same conditions as nationals.<sup>2</sup>
2. Member States shall allow adults **granted refugee or subsidiary protection status** access to the general education system, further training or retraining, under the same conditions as nationals.<sup>3</sup>
3. Member States shall ensure equal treatment **of beneficiaries of refugee or subsidiary protection status** and nationals with regard to the recognition of **foreign** diplomas, certificates and other **evidence of formal** qualification, **while taking into account possible complications met by them when seeking to authenticate such documents.**<sup>4</sup>

---

<sup>1</sup> **A/D/E/FIN/NL/P** : scrutiny reservations.  
**A** : opposed granting the same treatment to both statuses.  
**E** : refer to "EU nationals" instead of to "nationals".

<sup>2</sup> **FIN** : specify access to school or pre-school education.

<sup>3</sup> **S** : scrutiny reservation.

<sup>4</sup> **A/IRL** : scrutiny reservations.

**Article 26**  
**Social Welfare**

Member States shall ensure that **beneficiaries of refugee or subsidiary protection status** receive, **in the Member State that has granted such statuses**, the necessary assistance in terms of social welfare and means of subsistence **as nationals of that Member State**.<sup>1</sup>

**Article 27**  
**Health [...] care**

1. Member States shall ensure that **beneficiaries of refugee or subsidiary protection status** have access to health and **other assistance** under the same conditions as nationals of the Member State that has granted the status.<sup>2</sup>
  
2. Member States shall provide **necessary medical or other assistance** to **beneficiaries of refugee or subsidiary protection status** who have special needs, such as accompanied or unaccompanied minors, or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence.<sup>3</sup>

---

<sup>1</sup> **A/D/P/S/UK** : scrutiny reservations.

**F** : scrutiny reservation on granting the same treatment to beneficiaries of refugee or subsidiary protection status and to nationals. Moreover, the term "social welfare" should be clarified.

**FIN** : the wording of this provision does not correspond to the explanations given by the Commission in its "Commentary on Articles".

<sup>2</sup> **D** : different access should be granted to people enjoying different statuses (refugee or subsidiary protection).

<sup>3</sup> **L** : read "Member States shall ensure as far as possible ..." (rest unchanged).

**IRL** : add the following sentence : "Insofar as services are not available, Member States shall work towards their provision".

**NL** : paragraphs (2) and (3) should be merged.

3. Member States shall ensure access to rehabilitation services **for** minors who have been victims of any form of abuse, neglect, exploitation, torture, cruel, inhuman and degrading treatment or who have suffered from armed conflict **and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.**<sup>1</sup> [...]

## Article 28

### Unaccompanied minors<sup>2</sup>

1. Member States shall take the necessary measures as soon as possible, to ensure the representation of unaccompanied minors **granted refugee or subsidiary protection status** by legal guardianship or, **where necessary**, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation **taking into account the best interests of the child.**
2. Member States shall ensure that the minor's needs are duly met in the implementation of the provisions of this Directive by the appointed guardian **or representative.** The appropriate authorities shall make regular assessments.<sup>3</sup>
3. Member States shall ensure that unaccompanied minors are placed **either:**<sup>4</sup>
  - (a) with adult family members; or
  - (b) with a foster family; or
  - (c) in centres specialised in accommodation for minors; or
  - (d) in other accommodation suitable for minors.

---

<sup>1</sup> Wording taken from Article 18(3) of the Directive on the reception of asylum seekers as adopted by the Council on 19 December 2002 (15398/02 ASILE 78).

Same comments as for paragraph 2.

<sup>2</sup> This Article has been adapted to the wording of Article 19 of the Directive on the reception of asylum seekers as adopted by the Council on 19 December 2002 (15398/02 ASILE 78).

**FIN** : protection must be provided at least at the same level as that provided for national minors who have being taken into care.

<sup>3</sup> **NL** : the second sentence of this paragraph should be moved to Article 36.

<sup>4</sup> **D/S** : ensure that none of the language versions make this list of possibilities an order of preference.

4. **As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.**
5. **Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.**
6. **Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.**

#### **Article 29**

##### **Access to housing**

The Member States shall ensure that **beneficiaries of refugee or subsidiary protection status** have access to **housing** or, if necessary, receive the means to obtain housing, **in both cases under equivalent conditions as nationals**<sup>1</sup>.

---

<sup>1</sup> A : limit this obligation to information about the housing market.

## Article 30

### Freedom of movement within the Member State

Member States shall **allow** freedom of movement within their territory **to beneficiaries of refugee or subsidiary protection status, unless compelling reasons of national security or public order otherwise require.**<sup>1</sup>

## Article 31

### Access to integration facilities<sup>2</sup>

1. In order to facilitate the integration of refugees into society, Member States shall make provision for specific support programmes tailored to their needs in the fields of, inter alia, employment, education, healthcare and social welfare;
2. Member States shall grant **beneficiaries of** subsidiary protection access to equivalent programmes, not later than one year after their status is granted.<sup>3</sup>

## Article 32

### Voluntary return<sup>4</sup>

Member States shall grant **beneficiaries of refugee or subsidiary protection status** access to voluntary return programmes<sup>5</sup> for those who wish to return on a voluntary basis to their country of origin.

---

<sup>1</sup> **D/EL/IRL** : scrutiny reservations.

**EL/E/IRL/I/UK** : add exceptions for circumstances where these persons may be subject to restrictions on free movement (i.e. national security, public order, criminal proceedings).

<sup>2</sup> **P/UK** : scrutiny reservations.

<sup>3</sup> **FIN/NL/S** : delete the following words "not later than one year after their status is granted".

**A/D** : scrutiny reservations.

<sup>4</sup> **D/FIN** : scrutiny reservations.

**IRL** : start this provision with the following words : "Within the limit of their resources, Member States may endeavour..." (rest unchanged).

**UK** : delete this provision. Otherwise, make the amendment suggested by IRL.

<sup>5</sup> **FIN/L** : read "assistance" instead of "programmes".

**CHAPTER VI**  
**Administrative cooperation**

**Article 33**  
**Cooperation<sup>1</sup>**

Member States shall each appoint a national contact point, whose address they shall communicate to the Commission, which shall communicate it to the other Member States.

Member States shall, in liaison with the Commission, take all appropriate measures to establish direct Cooperation and an exchange of information between the competent authorities.

**Article 34**  
**Staff and resources**

1. Member States shall ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female refugees or beneficiaries of subsidiary protection status and their accompanying family members,<sup>2</sup> as well as the specific needs of minors, in particular unaccompanied minors.
2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.<sup>3</sup>

---

<sup>1</sup> **FIN/NL** : clarify how this co-operation will work in practice.

<sup>2</sup> **NL** : accompanying family members should also have applied for international protection.

<sup>3</sup> **D/F** : delete this provision, which does not belong in a harmonisation Directive.

## CHAPTER VII

### Final provisions

#### Article 35

#### Non-discrimination<sup>1</sup>

Member States shall implement the provisions of this Directive without discrimination on the basis of sex, race, nationality, membership of a particular social group, health, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

#### Article 36

#### Reports

By [1 January 2007] at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. These proposals for amendments shall be made by way of priority in relation to Article 15, taking into consideration the international obligations of Member States regarding non-refoulement, existing at the time these proposals are made. Member States shall send the Commission all the information that is appropriate for drawing up that report. After presenting the report the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.<sup>2</sup>

---

<sup>1</sup> D/EL/F : delete this provision. Its content could be placed in the preamble.

<sup>2</sup> Recital 24 will be amended as follows :

"(24) The implementation of this Directive should be evaluated at regular intervals, taking into consideration in particular the evolution of the international obligations of Member States regarding non-refoulement."

**Article 37**  
**Transposition**

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **[1 January 2005]** at the latest. They shall forthwith inform the Commission thereof.

When the Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

**Article 38**  
**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

**Article 39**  
**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*